

## **BILL ANALYSIS**

C.S.H.B. 3394  
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Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Despite the duty of judges to remove guardians who are incapacitated, there is currently no method in state law to allow a judge on his or her own motion to determine whether the guardian is incapacitated. C.S.H.B. 3394 allows judges to appoint a court investigator or guardian ad litem to investigate whether probable cause exists to believe a guardian or proposed guardian is incapacitated and to allow for a medical exam for such purposes.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 3394 amends the Estates Code to authorize a court, on the court's own motion or on complaint of an interested person, if there is probable cause to believe that a guardian is an incapacitated person, to appoint an attorney ad litem to represent a ward's interests and a court investigator or guardian ad litem to investigate whether the guardian should be removed. If the court determines it is necessary, the court may appoint the necessary physicians to examine the guardian to determine whether the guardian is an incapacitated person. The bill applies to a guardianship created before, on, or after the bill's effective date.

### **EFFECTIVE DATE**

September 1, 2021.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3394 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

While the substitute retains the authorization from the original for a court to order an investigation on its own motion or a complaint of an interested person into whether a guardian is an incapacitated person, the substitute does not include the following provisions that appeared in the original:

- the authorization to order an investigation regarding a proposed guardian;

- the requirement for the complaint of the interested person to be in the form of a written application with certain contents;
- the requirement for the court's order appointing the guardian ad litem or court investigator to include a statement that the guardian has the right to petition the court to have the appointment set aside;
- the requirement that the guardian ad litem or court investigator file a report containing findings with the court;
- the condition on the appointment of a physician that the guardian ad litem or court investigator first file an application recommending the appointment as necessary and that the court hold a hearing and give notice to the guardian;
- the requirement for the physician to return a written letter or certificate of the physician's findings; and
- the authorization for the court to order the payment of related costs.